

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

.....	X	
Scott Darryl Reese,	:	
Claimant	:	
	:	
v.	:	
	:	
IN RE:	:	Honorable Robert Drain
	:	
DELPHI CORPORATION, et. al.,	:	Case No. 05-44481
DELPHI - DEBTOR IN POSSESSION	:	
DELPHI CHASSIS SYSTEMS	:	Bankruptcy Trustee
Debtor,	:	
	:	(Jointly Administered)
.....	X	

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c/o 329 Basket Branch  
Oxford, Michigan state  
[48371-6359]  
Creditor - (248) 969-4055

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**Claimant's Ex-parte Motion For Relief From The Automatic Stay**

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Now comes Scott Darryl Reese, private sector American Citizen worker of *Delphi Energy & Chassis Systems, Saginaw Operations, 2328 East Genesee, Saginaw, Michigan, 48601*, in the 50 union united States, and moves before this court for Relief from Automatic Stay of the appropriation and distribution of the funds collected in the possession of Debtor *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION*, DELPHI World Headquarters located at *5725 Delphi Drive, Troy, Michigan, 48098-2815*, and says as follows:

1. Claimant and Creditor, Scott Darryl Reese, hereinafter Claimant, was notified of the *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION, Delphi Energy & Chassis Systems* action in Bankruptcy, Case No. 05-44481. See *Notice of Bankruptcy Proceedings* as **Exhibit A** – Bankruptcy Proceedings in the United States Bankruptcy Court, Southern District of New York.

2. Claimant, Scott Darryl Reese, presents this valid claim against *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION*, and *Delphi Energy & Chassis Systems* in this Bankruptcy case, as a creditor because of alleged tax deductions and alleged tax liabilities – “withholdings” – that were timely challenged by the Claimant.

3. Claimant, Scott Darryl Reese, presents this claim in an amount in excess of \$10,000.00, U.S. Funds, at the time of this filling for Intervention as a Creditor. The personal damage claim in proceeding in a Bankruptcy case may outweigh that of the amount that is recoverable, subjecting the officers to personal liabilities for the activities of *DELPHI CORPORATION, et. al., LLC*.

4. Claimant, Scott Darryl Reese, offered actual proofs of personal damages on unauthorized payroll deductions by Charla Keith, as a private sector worker of *Delphi - Debtor in Possession*, place of action *General Motors/Delphi Automotive Payroll Services, Wage Attachments, 1225 West Washington Street, Tempe, Arizona, 85281* on behalf of *Delphi Energy & Chassis Systems, Saginaw Operations, 2328 East Genesee, Saginaw, Michigan, 48601*, in the 50 United States, and within the jurisdiction of the federal Bankruptcy court. (**Exhibit 2A**)

5. Claimant, Scott Darryl Reese, is a party of interest in this action, having a personal action against *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION*, DELPHI World Headquarters located at *5725 Delphi Drive, Troy, Michigan, 48098-2815*, place of action *Delphi Energy & Chassis Systems, Saginaw Operations, 2328 East Genesee, Saginaw, Michigan, 48601*,

and *General Motors/Delphi Automotive Payroll Services, Wage Attachments, 1225 West Washington Street, Tempe, Arizona, 85281*. See Copy of Agreement to hire Scott Darryl Reese as **Exhibit B, In lieu of “IRS Form W-4”** and copy of claim of exception for City of Saginaw, State of Michigan and Federal Income Tax withholdings on **W-4 Qualifying Declaration, Exhibit C**, as proof of claim filed with this court. Both the **In lieu of “IRS Form W-4”** and **W-4 Qualifying Declaration** attachments were given to the Director of Payroll at *Delphi Energy & Chassis Systems, Saginaw Operations, 2328 East Genesee, Saginaw, Michigan, 48601*, Jody Stopyak, on or about September 6, 2006, who forwarded them on to *General Motors/Delphi Automotive Payroll Services, Wage Attachments, 1225 West Washington Street, Tempe, Arizona, 85281*, as well as, in all probability, payroll divisions located in Texas and the country of Jamaica. The reason stipulated to Claimant at this time was that no payroll whatsoever was done “in house” at the Saginaw, Michigan location.

## HISTORY OF CAUSE OF ACTION

6. Claimant, Scott Darryl Reese was hired on September 5, 2006, and filed with Debtor, *Delphi Energy & Chassis Systems, Saginaw Operations, 2328 East Genesee, Saginaw, Michigan, 48601*, and, by way of Jodi Stopyak, *General Motors/Delphi Automotive Payroll Services, Wage Attachments, 1225 West Washington Street, Tempe, Arizona, 85281*, his **In lieu of “IRS Form W-4”** and **W-4 Qualifying Declaration**. Both *Delphi Energy & Chassis Systems* and *General Motors/Delphi Automotive Payroll Services* are a part of *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION*, DELPHI World Headquarters located at *5725 Delphi Drive, Troy, Michigan, 48098-2815*.

7. These exceptions to withholding were honored by Debtor, *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION, Delphi Energy & Chassis Systems, Saginaw Operations, 2328 East Genesee, Saginaw, Michigan, 48601*, and *General Motors/Delphi Automotive Payroll Services, Wage Attachments, 1225 West Washington Street, Tempe, Arizona, 85281* from the actual filing date of September 6, 2006, payroll period ending September 10, 2006, to payroll period ending February 25, 2007. This is significant because *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION*, and *Delphi Energy & Chassis Systems* honored the **In lieu of “IRS Form W-4”** and **W-4 Qualifying Declaration** agreements up to this point, a full month after any supposed “lien” or “levy” action (**Exhibit D**) by the Internal Revenue Service (I.R.S.) informing

DELPHI to dishonor Claimant's agreements. DELPHI, at this time, began sending Claimant's appropriated money (**Exhibit E**) to the alleged "District Director" minus any court order to do so (**Exhibit F**) (Copy of Lien filed by the I.R.S. in the Oakland County Courthouse, Register of Deeds, Pontiac, Michigan, to justify alleged tax deductions and alleged tax liabilities: This Notice was without hearing and/or a signed order by a federal judge as final decision), although at the present time, the I.R.S. Detroit office disavows having received any money associated with Claimant's earnings, and that there exists no "District Director." See F.O.I.A. Requests and Responses from I.R.S. and *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION*, DELPHI World Headquarters located at 5725 Delphi Drive, Troy, Michigan, 48098-2815, (**Exhibit G**); (**Exhibit H**); (**Exhibit I**); (**Exhibit J**); (**Exhibit K**); (**Exhibit L**); (**Exhibit M**); (**Exhibit N**). Although no taxes were taken under the auspices of "FEDERAL TAX" up until March 04, 2007, federal taxes were taken in the form of both "FICA TAX SS" and "FICA TAX HI", as well as "SAGINAW TAX", absent any agreement or authority to do so in conjunction with Claimant's *In lieu of "IRS Form W-4"* and *W-4 Qualifying Declaration* agreements on file with *DELPHI CORPORATION, et. al.*

8. Claimant, Scott Darryl Reese, was only notified of the alleged "I.R.S. Lien" after third party had requested a copy from the Oakland County Register of Deeds, Oakland County, Michigan, which is open to the eyes of the general public, and Claimant obtained a copy via third party of *Notice of Federal Tax Lien* – (**at Exhibit F**), as no actual I.R.S. Lien exists, per response to I.R.S. Freedom Of Information Act (F.O.I.A.) – (**Exhibits H and P, respectively**). *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION*, and *General Motors/Delphi Automotive Payroll Services, Wage Attachments, 1225 West Washington Street, Tempe, Arizona, 85281*, used this *Notice of Federal Tax Lien* to presume his alleged I.R.S. tax liability (See *Notice of Federal Tax Lien*, for the years 1999-2002 of alleged I.R.S. Taxes owing) – all alleged without a hearing nor judicial order by the federal court.

9. On April 3, 2007, Claimant, Scott Darryl Reese, notified *General Motors/Delphi Automotive Payroll Services, Wage Attachments, 1225 West Washington Street, Tempe, Arizona, 85281* (**Exhibit W**) of the wrongful acts of the Internal Revenue Service, and that without a judgment of the federal court, *DELPHI CORPORATION, et. al.* would be taking the money, private property of creditor, appropriation and distribution of the funds collected in the possession of Debtor, in violation of the due process clause of the Constitution of the United States. (**Exhibit X** – **Letter dated April 24, 2007**)

**10.** This practice and procedure of *DELPHI CORPORATION, et. al.*, is continuing to this day and Creditor has been deprived of his private property in the amount of \$40,844.62 as of 09-02-2007. This amount exceeds that found on the *Notice of Federal Tax Lien* received January 25, 2007, and filed by R. A. Mitchell for Debra K. Hurst.

**11.** Claimant, Scott Darryl Reese, moving as the principle party as Citizen of the 50 United States and as Creditor of interest and by reference and artificial creation of SCOTT DARRYL REESE; SCOTT D REESE, both a/k/a/, has been made a party to this cause of action by *DELPHI CORPORATION, et. al.*, *DELPHI - DEBTOR IN POSSESSION*, DELPHI World Headquarters located at 5725 Delphi Drive, Troy, Michigan, 48098-2815, and Delphi Energy & Chassis Systems, Saginaw Operations, 2328 East Genesee, Saginaw, Michigan, 48601, original place of action and Claimant's place of work, and General Motors/Delphi Automotive Payroll Services, Wage Attachments, 1225 West Washington Street, Tempe, Arizona, 85281.

**12.** The minimum requirements imposed by the *Full Faith and Credit Clause* are that a forum State should not apply its law unless it has "a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair." See *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985), at 818, quoting [486 U.S. 736] *Allstate Ins. Co. v. Hague*, 449 U.S. 302 (1981), at 312-313. The constitutional issue in this case is somewhat more complicated than usual, because the question is not the typical one of whether a State can constitutionally apply its substantive law where both it and another State have certain contacts with the litigants and the facts underlying the dispute. See *Estin v. Estin*, 334 U.S. 541, 546 (1948) (the Full Faith and Credit Clause "substituted a command for the earlier principles of comity, and thus basically altered the status of the States as independent sovereigns.").

**13.** Claimant, Scott Darryl Reese, has no contract with the Department of the Treasury and/or the Federal Government of the United States and Citizen Scott Darryl Reese has not acquiesced into a contract with the Internal Revenue Services for withdrawal of private property without a signed federal court order that would allow such private property to be taken from his private sector earnings and payroll check.

**14.** Claimant, Scott Darryl Reese, submitted to the payroll department of *Delphi Energy & Chassis Systems, Saginaw Operations, 2328 East Genesee, Saginaw, Michigan, 48601*, his ***In lieu of "IRS Form W-4" (Exhibit B)***. This sworn affidavit, submitted pursuant to Title 26 USC 3402(n) of the Internal Revenue Code (reproduced below), "certifies that:

1. I incurred no statutory liability for income tax imposed under subtitle A of the Internal Revenue Code for the preceding taxable year;

2. I anticipate that I will incur no statutory liability for income tax imposed under subtitle A for the current taxable year; and

3. I have a right to a full refund of any and all amounts withheld for both years.”

To date, the question of “statutory liability for income tax imposed under subtitle A of the Internal Revenue Code” remains unanswered. **(See Exhibits M and U, respectively)**

**15.** Claimant, Scott Darryl Reese, moves to modify this claim to include the years that the I.R.S. alleges a tax due and the moneys taken from his pay due him by the debtor *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION*. Reference copy of “Lien” on file in Oakland County. **(See Exhibit F)**

**16.** Claimant, Scott Darryl Reese, has fully complied with giving notice to debtor *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION* **(See Exhibits W, Y, Z and AA)**, of his exception to City of Saginaw, State of Michigan and Federal Income Tax withholdings on both his *W-4 Qualifying Declaration* **(Exhibit C)**, and *In lieu of “IRS Form W-4”* as **(Exhibit B)**, in support of this claim of action.

See **INTERNAL REVENUE CODE SECTION 3402(n)**

**3402(n) [Employees] incurring no income tax liability.**

“Notwithstanding any other provision of this section, *an [employer\*] shall not be required to deduct and withhold any tax under this chapter upon a payment of wages to an [employee] if there is in effect with respect to such payment a withholding exemption certificate* (in such form and containing such other information as the Secretary may prescribe) *furnished to the [employer] by the employee certifying that the [employee]: ...*”

(A) Claimant, Scott Darryl Reese, reserves the right to petition the attorney general for the state of Michigan to intervene in this action pursuant to Chapter 36 of the Michigan Compiled Laws (MCL), 600.3601(1),(2):

#### PROCEEDINGS AGAINST CORPORATIONS

**600.3601 Restraint of unauthorized exercise of corporate rights, privileges, or franchises;**

**injunction before answer; continuance.**

Sec. 3601.

(1) Upon complaint being filed by the attorney general, the circuit court may enjoin any corporation from assuming or exercising any franchise, liberty, or privilege or transacting any business not authorized by the corporation's charter. The court may in the same manner restrain any individuals from exercising any corporate rights, privileges, or franchises which have not been granted to them by the laws of this state.

(2) The court may issue the injunction before the answer, upon satisfactory proof that the defendants have usurped, exercised or claimed any franchise, privilege, liberty, or corporate right not granted to them; and after the answer the injunction may be continued until final judgment is had.

**History:** 1961, Act 236, Eff. Jan. 1, 1963

**17.** Claimant, Scott Darryl Reese, claims that *Delphi Energy & Chassis Systems – Saginaw Operations* is by definition a “payer,” and not a statutorily defined “employer,” and Claimant is a “Payee” and not a statutorily defined “employee.” See corporation papers on file with the department of state, corporate securities and exchange, state of Michigan (**Exhibit BB**). However, as the law always allows for relief, a statutorily defined (evidence of) 26 U.S.C. §3401(c) “employee” as well as that of a statutorily defined “taxpayer” (26 U.S.C. §7701(a)(14) “taxpayer” ... any person subject to any *internal revenue tax*), cannot have a better set of rights and access to equitable and just relief than that of Claimant, Scott Darryl Reese. *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION*, DELPHI World Headquarters located at 5725 Delphi Drive, Troy, Michigan, 48098-2815, seem to be making a legal conclusion that Claimant is a “taxpayer” minus any judicial determination stating this conclusion in the affirmative. This is a “Due process violation presumption that [these] statutes, codes, rules, regulations and ordinances apply to [Claimant],” **Rodrigues v Donovan, 769 F2d 1344, at 1348, note 4.**

**18.** Claimant, Scott Darryl Reese, claims that the *W-4 Qualifying Declaration (Exhibit C)* is self evidence of his claim of exception for City of Saginaw, State of Michigan and Federal Income Tax withholdings, stating that “... execution of the Form W-4 to which this statement is attached is not to be construed as authorizing the withholding of anything of or from what is owed to me which does not constitute “wages” as defined at 26 USC §§ 3401 and 3121; nor as my accepting, acknowledging, declaring or establishing my status as an officer, employee, or elected official of the

United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing or as an officer of a federally taxable corporation; or that of the entity to which it is submitted as an "American employer " as relevantly defined at 26 USC 3121(h).”

**19.** Claimant, Scott Darryl Reese further restates, “This statement constitutes formal notice **(Exhibit C)** that any assertions, explicit or implied, by the entity to which this form and statement are submitted that I have at any particular time acquired the status of an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing or of an officer of a federally taxable corporation; or that that entity has acquired the status of an "American employer" as relevantly defined at 26 USC 3121(h) will be subject to challenge as provided for by law.”

**20.** Claimant, Scott Darryl Reese, further states in these Bankruptcy proceedings, that this is a valid claim against the debtor *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION*, DELPHI World Headquarters located at 5725 Delphi Drive, Troy, Michigan, 48098-2815, of his private property in an actual amount of \$40,844.62 as of 09-02-2007 **(See Exhibits D, E, CC, DD and EE)**, and pleads for Special Damages of Fraud and Fraudulent taking of his private property in treble-damages and costs. See Federal Rules of Civil Procedure, Rule 9 and Rule 12, as Claimant further pleads for reasonable costs incurred under the *Equal Access to Justice Act*, that justice best be served. It’s also of significant attention that Claimant has, to this very day, never actually been served with a *Form 668-W(c)* **(Exhibit CC)**. The *Form 668-W(c)* faxed from *G.M./Delphi Wage Garnishments* in Arizona came with considerable opposition for Claimant to obtain, as Claimant was constantly barraged by his *Human Resources Department* to “write letters to your Congressman and Senator to settle this” ... “if you disagree with the income tax,” as if these statements had any relevance to the legality of what was being sought. Claimant can understand the reluctance of his *Human Resources Department* to produce anything that might aid him, as the HR Dept. clearly have no comprehension of the limited purpose and application of a *Form 668-W(c)*. The *Form 668-W* given to *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION*, DELPHI World Headquarters located at 5725 Delphi Drive, Troy, Michigan, 48098-2815, *Delphi Energy & Chassis Systems, Saginaw Operations, 2328 East Genesee, Saginaw, Michigan, 48601*, and *General Motors/Delphi Automotive Payroll Services, Wage Attachments, 1225 West Washington Street, Tempe, Arizona, 85281* allegedly requires turning over “...this taxpayer’s wages and salary



*that have been earned but not paid yet...*”, but in the case of private-sector worker Scott Darryl Reese working for private-sector company DELPHI, this command is meaningless. No matter how much they wish, *DELPHI CORPORATION, et. al.* are a *Limited Liability Company* (LLC) operating within the state of Michigan (**See Exhibit BB, Exhibit J, and Exhibit R, respectively**), and not a “U.S. Corporation” or similar federal entity, their desires, intents, declarations, elections and misconceptions notwithstanding. The *Form 668-W(c)* ploy doesn’t rely entirely on that ‘see no evil’ thing. Cooperation is ‘encouraged’ by inclusion on the back of the *Form 668-W(c)* of selected excerpts of another section of law relating to levy – 6332: Surrender of Property Subject To Levy. Those excerpts warn that “*anyone in possession of (or obligated with respect to) property or rights to property subject to levy upon which levy has been made*” shall turn it over on demand of the Secretary or risk being targeted themselves for the amounts involved. Of course, 6332 only applies to “property subject to levy” as identified – and limited by – the conveniently missing section 6331(a). This is what 6331(a) says:

If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. **Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia,** by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section. **[Emphasis added.]**

Claimant has done numerous *Freedom of Information Act* (FOIA) requests made to the Internal Revenue Service on March 22, 2007, which have produced no positive or effectual responses other than asking for extensions of time within which to answer said requests, among which are:

- (a) **IRS FOIA Request - §§6201, 6203, etc. Assessments - 2007**  
Certified Mail #: 7004 1160 0002 2313 3816,  
dated and mailed on March 22, 2007 (See Exhibit G)
- (b) **IRS FOIA Request - Lien/Levy - 2007**  
Certified Mail #: 7004 1160 0002 2313 3823,  
dated and mailed on March 22, 2007 (See Exhibit H)
- (c) **IRS FOIA Request - Information Returns, Forms W-2 and 1099, etc. - 2007**  
Certified Mail #: 7004 1160 0002 2313 3830,  
dated and mailed on March 22, 2007 (See Exhibit I)
- (d) **IRS FOIA Request - United States §3401(d) “employer” - 2007**  
Certified Mail #: 7004 1160 0002 2313 3847,  
dated and mailed on March 22, 2007 (See Exhibit J)
- (e) **IRS FOIA Request - Form 668-W: Notice of Levy Service - 2007**  
Certified Mail #: 7004 1160 0002 2313 3854,  
dated and mailed on March 22, 2007 (See Exhibit K)
- (f) **IRS FOIA Request - Judgment - 2007**  
Certified Mail #: 7004 1160 0002 2313 3861,  
dated and mailed on March 22, 2007 (See Exhibit L)
- (g) **IRS FOIA Request - Explanation of reason for refund disallowance - 2007**  
Certified Mail #: 7004 1160 0002 2313 3878,  
dated and mailed on March 22, 2007 (See Exhibit M)
- (h) **IRS FOIA Request - Cite Which Part of the Request Is Being Met**  
Certified Mail #: 7004 1160 0002 2313 3908,  
dated and mailed on March 22, 2007 (See Exhibit N)

Cited within these requests is a demand for Claimant’s oath of office, commission, and bond,

all of which he would necessarily have to have if he were one subject to the provisions of 6331(a) as **“any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia.”**

Also cited within these requests is a demand for certified copies of all Judgments, in regard to “Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320,” filed on 01/16/2007, with the REGISTER OF DEEDS-REAL PROPERTY, OAKLAND COUNTY, PONTIAC, MI, 48341, and received by Claimant (Requestor) as Certified Mail 7105 5678 7184 5930 5340, a necessary element of any §6331 Levy, as any §6331 pertaining to the private sector outside the authority and scope of the statutes – statute which applies exclusively to federal workers (insofar as compensation is concerned) – would also necessarily have to be “execute[d] under a judicial process”.

Per 26 U.S.C. §6331(h) Continuing levy on certain payments

(1) In general

If the Secretary approves a levy under this subsection, the effect of such levy on specified payments to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released. Notwithstanding section 6334, such continuous levy shall attach to up to **15 percent** of any specified payment due to the taxpayer.

If Claimant WERE SUBJECT to 26 U.S.C. §6331(h)(1), he would have had his money properly relinquished to the Secretary at a rate of 15 percent, and not 99 percent, as that which was appropriated and distributed to a third party.

No law requires a worker to file a *Form W-4* (or its equivalent). In *U.S. v. Mobil Oil Co.*, 82-1 USTC para. 9242, U.S.D.C. ND Tex. Dallas 1981 CA. 3-800438-G, the court ruled that private-sector company/private sector contractor does not even have to send a *Form W-4* or other employment forms to the Internal Revenue Service unless served with a judicial court-ordered summons to do so. The significance of judicial process cannot be emphasized enough.

**21.** Claimant holds that “The State is sovereign over any trade, commerce, and industry it regulates under the police powers of the State. Therefore, the State can pass any statute it desires to control or regulate those entities, to include statutes that would, if applied to a natural Citizen, violate constitutional Rights. The State can control every action of regulated enterprises but cannot apply that class of statutes to a natural Citizen.” *The History of American Constitutional or*

*Common Law with Commentary Concerning Equity and Merchant Law*” (1995, at page 75), ISBN: 1-57282-010-1.

A. The Supreme Court of the United States fully understands the difference between a natural Citizen and a corporation or regulated enterprise and they have stated: “...we are of the opinion that there is a clear distinction ... between an individual and a corporation ... The individual may stand upon his Constitutional Rights as a Citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the State, since he receives nothing therefore, beyond the protection of his life and property. His rights are as existed by the law of the land long antecedent to the organization of the State, and can only be taken away from him by due process of law, and in accordance with the Constitution ... He owes nothing to the public so long as he does not trespass upon their rights.” (emphasis added). *Hale v. Henkel*, 201 U.S. 43 (1906).

**22.** Claimant says that the Federal courts have ruled that: **“The employer is not authorized to alter the form or to dishonor the employee’s claim.\*** The certificate [or affidavit] goes into effect automatically in accordance with certain standards enumerated in Section 3402(f)(3). Any other knowledge or suspicions of employers or government officials are irrelevant to the purpose because it is only the information on the certificate which affects tax withholding.” *United States v. Malinowski*, 347 F. Supp. 347(1972).\*

\* The use of the terms “employee” (26 U.S.C. §3401(c)), “employer” (26 U.S.C. §3401(d)), “taxpayer” ( U.S.C. §7701(a)(14)), “withholding agent” (26 U.S.C. §§§§ 1441, 1442, 1443, and 1461) and “wages” (26 U.S.C. §§ 3401(a) and 3121(a)), etc., as they appear intermittently throughout this brief are not to be construed as an affirmative defense on the part of Claimant as having any applicability to him. It is well established law that certain groups exercising privileges cannot have a superior set of rights than those not exercising such privilege, in the instant case, Claimant laboring as a private sector worker for a private sector (state of Michigan) corporation/company, and having no benefit of federal privilege.

**ARGUMENT** - - - Scott Darryl Reese argues at common-law and pleads lex-fori that his exceptions filed with *Delphi Energy & Chassis Systems, Saginaw Operations, 2328 East Genesee, Saginaw, Michigan, 48601, DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION,*

DELPHI World Headquarters located at 5725 Delphi Drive, Troy, Michigan, 48098-2815, were dishonored as such, exceptions in the form of *In lieu of "IRS Form W-4"* (See Exhibit B) and copy of claim of exception for City of Saginaw, State of Michigan and Federal Income Tax withholdings on *W-4 Qualifying Declaration*, (See Exhibit C), as proof of claim filed with this court. Both the *In lieu of "IRS Form W-4"* and *W-4 Qualifying Declaration* attachments were given to the Director of Payroll, Jody Stopyak, *Saginaw Operations*, and forwarded to *General Motors/Delphi Automotive Payroll Services, Wage Attachments, 1225 West Washington Street, Tempe, Arizona, 85281*, in the first week of September of 2006. (See Exhibit FF – *IRS CP-504 Letter of James M. Carter* and Exhibit GG – the *E. Clay Shaw Letter*.) The *IRS CP-504 Letter* states, in part, "The Federal income tax is a "pay-as-you-go" tax. You must pay the tax as you earn or receive income during the year. There are two ways to do this:

1. WITHHOLDING: If you are an employee, your employer will withhold income tax from your pay. Tax is also withheld from other types of income - - including pensions, bonuses, commissions, and gambling winnings. In each case, the amount withheld is paid to the Internal Revenue Service in your name.

If too little tax is being withheld from your wages to pay the tax you will owe at the end of the year, you should file a new Form W-4, Employee's Withholding Allowance Certificate, with your employer to change the amount of withholding.

2. ESTIMATED TAX PAYMENTS: If you don't pay your tax through withholding, or don't pay enough tax through withholding, you have to estimate the tax you will owe and make payments during the year directly to the IRS.

There's actually a little bit of truth and clarity in this IRS form letter, in that it states, "**IF** you are an employee, your employer will withhold income tax from your pay." This is not in consideration of the statutes and code regarding voluntary agreements, of course. Likewise, "If too little tax is being withheld from your **WAGES** ...", is also in and of itself true to the extent that ONLY wages are subject to withholding, minus the certain conditions of voluntary agreements and judicial process. Again, it would be a "Due process violation presumption that [these] statutes, codes, rules, regulations and ordinances apply to [Claimant]," **Rodriguez v Donovan, 769 F2d**

**1344, at 1348, note 4.**

From the *E. Clay Shaw Letter*:

*U.S. Code, Title 26, Subtitle F, Chapter 64, Subchapter D Part II, Section 6331 (a) states:*

*If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. **Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official.** If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section. (Emphasis added).*

*This particular provision does not appear to extend to private sector employees. If a form was given to an employer that omitted section (a), this form could be considered misleading.*

Who should know the meaning of the law better than a member of Congress?

**23.** Claimant says he is not involved in a “trade or business”: “every employer engaged in a trade or business” is engaged in “the performance of the functions of a public office”. 26 U.S.C. §7701(a)(26) “Trade or Business”: the performance of the functions of a public office. From *Regarding The “Income Means Corporate Profit” Misunderstanding* by Pete Hendrickson, author, ***Cracking the Code***:

“The labor of a human being is not a **commodity**\*\* or article of commerce.” (*Title 15 United States Code, SECTION 17.*) “Labor or personal services are not construed to constitute a “commodity” or

“article of trade” at common law. (*Carlton v. Manuel*, 187 P.2d. 558.562.563, 64 Nev. 570.)

“The Code of Federal Regulations clearly advises the employers at 26 CFR §§31.3402(p)-1(a), ‘An employee who desires to enter into an agreement for withholding ... shall furnish his employer with Form W-4 (or its equivalent) for withholding. The furnishing of such Form W-4 shall constitute a request for withholding.’ Then, 31 CFR §§215.2(n)(1) clearly tells the employers they cannot take amounts from the workers’ pay for any form of State tax UNLESS the employee VOLUNTARILY elects to have such sums withheld.”

\*\* It is self evident that Claimant is not an “employee” of *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION*, DELPHI, as defined in 26 U.S.C., and that Claimant did not voluntarily elect to have money removed from his private earnings and subject himself to the statutes related to the Internal Revenue Service.

**§§ 31.3402(p)-1 Voluntary withholding agreements.**

*(a) In general. An employee and his employer may enter into an agreement under section 3402(b) to provide for the withholding of income tax upon payments of amounts described in paragraph (b)(1) of §§ 31.3401(a)-3, made after December 31, 1970. An agreement may be entered into under this section only with respect to amounts which are includible in the gross income of the employee under section 61, and must be applicable to all such amounts paid by the employer to the employee. The amount to be withheld pursuant to an agreement under section 3402(p) shall be determined under the rules contained in section 3402 and the regulations thereunder. See §§ 31.3405(c)-1, Q&A-3 concerning agreements to have more than 20-percent Federal income tax withheld from eligible rollover distributions within the meaning of section 402.*

“The power of the United States to tax is limited to persons, property, and business within their jurisdiction, as much as that of a state is limited to the same subjects within its jurisdiction.” Justice Field, in *United States v. Erie Ry. Co.*, 106 U.S. 327, 333 (1882); “... the states are separate sovereigns with respect to the federal government.” *Heath v. Alabama*, 474 U.S. 82 (1985).

The long established dictionary definition of “income” is: “Revenue; produce of any thing”, and revenue means: “annual profits received from lands or other funds.” *Dictionary of the English Language, Samuel Johnson (1755); A Complete Dictionary of the English Language, Thomas Sheridan (1789).*

“Working by an artisan at his trade, carrying on an ordinary business, or engaging in a common occupation or calling cannot be subjected to a license fee or excise.”, 247 Mass. 589, 593,

“The *rights to labor* and to do ordinary business are natural, essential and *inalienable*, partaking of the nature both of personal liberty and of private property.” 247 Mass. 589, 597, and cases cited.

“The income tax is, therefore not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the *subject* of the tax: it is the basis for determining the amount of tax.” **HOUSE CONGRESSIONAL RECORD, MARCH 27, 1943, PAGE 2580.**

“Neither can the tax be sustained as a tax on the person, measured by income. Such a tax would be by nature a capitation rather than an excise....”(p. 170). ***Peck & Co. v. Lowe*, 247 U.S. 165, page 167, 170 (1917).**

The following should help clarify the duties as a “withholding agent”.

The definition of “*Withholding Agent*” from Chapter 79, Subtitle F Procedure and Administration, Internal Revenue Code Section 7701 (16) **Withholding Agent:** “The term [legal word] **“Withholding Agent”** means any person required to deduct and withhold any tax under the provisions of **sections 1441,1442, 1443, or 1461.**”

The first thing to point out is that all of the code sections that start with 14 are in Chapter 3 of Title 26. Chapter 3 is titled: WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS. These sections, 1441, 1442, 1443, and 1461, cited in the definition of a Withholding Agent are titled:

1441. Withholding of Tax on Nonresident Aliens.

1442. Withholding of tax on foreign corporations.

1443. Foreign Tax Exempt Organizations

1461. Liability for withheld tax. Every person required to deduct and withhold any tax under this chapter is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount **of any payments made in accordance with the provisions of this chapter.** And **what Chapter is this from? Chapter 3 - Withholding from Foreigners.**

*Freedom of Information Act* (FOIA) requests made to the Internal Revenue Service on March 22, 2007, have produced no positive or effectual responses other than asking for extensions of time within which to answer said requests, or purposefully ignoring and avoiding the requests altogether. An answer to the ***IRS FOIA Request - Information Returns, Forms W-2 and 1099, etc. - 2007, Motion for Relief from Automatic Stay in Delphi Bankruptcy Proceedings*** **Page 16 of 23**



(See **Exhibit I and Exhibit Q, respectively**), would allow a follow up FOIA to make a determination of who the “*withholding agent*” defined at **26 U.S.C. §6051(a)** is. Sec. 6051. Receipts for employees falls under the heading of PART III - INFORMATION RETURNS, Subpart C - Information Regarding Wages Paid Employees, in accordance with CHAPTER 61 - INFORMATION AND RETURNS.

**ARGUMENT - - -** It is alleged that *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION*, DELPHI World Headquarters located at 5725 Delphi Drive, Troy, Michigan, 48098-2815, and Delphi Energy & Chassis Systems, Saginaw Operations, 2328 East Genesee, Saginaw, Michigan, 48601, place of action, and General Motors/Delphi Automotive Payroll Services, Wage Attachments, 1225 West Washington Street, Tempe, Arizona, 85281 is not a withholding agent of the Department of the Treasury, lacking a Badge of authority to deduct State of Michigan and/or Federal Income Tax for Claimant Scott Darryl Reese, without a signed order following a judicial hearing.

**24.** Claimant, Scott Darryl Reese petitions for treble-damages and related costs incurred in having to defend his Right to his private property taken without due-process and without a federal judges order following a hearing at common-law. “*It is not the function of our government to keep the citizen from falling into error; it is the function of the citizen to keep the government from falling into error.*” – **United States Supreme Court Justice Robert H. Jackson**

**25.** Claimant further says he filed additional *Freedom Of Information Act* Requests (FOIAs) with the IRS that were, to this day, left unanswered, casting a doubt upon the entire practices and procedures of the IRS collecting any alleged tax withholdings and alleged tax liabilities, as well as *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION*, acting as a second party, collecting these same alleged tax withholdings and alleged tax liabilities without hearing and final signed order by a federal judge, and turning them over to a third party. (**See Exhibits G through V, respectively**)

**26.** Further, Claimant says, under the principles of law and common law under Rights, Privileges and Immunities, Scott Darryl Reese has no *Voluntary Withholding Agreement* with the personnel, staff, agents, and/or officers of *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION*, to collect taxes or withhold any payments due him for labor.

**27.** Further, the personnel, staff, agents, and/or officers of *DELPHI CORPORATION, et. al.,*

*DELPHI - DEBTOR IN POSSESSION*, are not revenue collection officers and/or agents for the IRS, the collection agency for the *Department of the Treasury*. See **26 CFR § 301.7512-1(d)**, that in order to withhold taxes from a worker without his consent, the IRS Director must order in writing, or order personally, hand-deliver to a company, via internal revenue officer or employee, a judicial court order ordering such withholding. No such order exists. (See ***Letter to Delphi Corporation Tax Staff 04-30-07 – Exhibit Z***; also See ***Exhibits G through V, respectively, and Letter to General Motors-Delphi Automotive Payroll Services 08-21-07 – Exhibit AA***) It's not up to Claimant to prove a negative at law, or that which doesn't exist, it's up to both the IRS and *DELPHI CORPORATION, et. al.* to prove and provide anything with Claimant's name on it, in conjunction with the *Bullard-Plawecki employee right to know act*, Act 397 of 1978, MSA - Michigan Statutes Annotated, Michigan Compiled Laws, MCL, as well as Due Process of Law.

**28.** Further, Claimant says that *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION*, and *Delphi Energy & Chassis Systems, Saginaw Operations, 2328 East Genesee, Saginaw, Michigan, 48601*, are in violation of contractually established union pay rates by collective bargaining. (See ***Exhibits D and E, respectively***) Note: These exhibits should not be construed as Claimant ever having received or had liability for statutorily defined “wages”, “FICA TAX SS”, “FICA TAX HI”, or “FEDERAL TAX.” *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION*, and *Delphi Energy & Chassis Systems, Saginaw Operations, 2328 East Genesee, Saginaw, Michigan, 48601*, position of categorizing all federal tax into three separate categories notwithstanding (“FICA TAX SS”, “FICA TAX HI”, or “FEDERAL TAX.”), they are all either a federal tax with which a liability is associated in accordance to being subject to withholding, or not. They also should not be construed as Claimant ever having received or had liability for statutorily defined “MICHIGAN TAX” or “SAGINAW TAX” for the same reason.

**29.** Further, Claimant says that *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION*, and *Delphi Energy & Chassis Systems, Saginaw Operations, 2328 East Genesee, Saginaw, Michigan, 48601*, are in violation of *DELPHI Ethics Policy* and the *DELPHI “Global Employees”* letter dated May 11, 2007. (See ***Exhibits HH and II, respectively***) From the *Ethics violations are bad for business* posting:

Ethics violations can have serious financial and legal repercussions. Ignoring them is not good for our business — or yours. Delphi DRIVE is our commitment to

corporate compliance, designed to foster the highest ethical standards and to make sure everyone knows what those standards are. You have the right and responsibility to protect your personal stake in Delphi. Sometimes, even good people can make bad choices. If you become aware of a compliance violation, talk to your manager or to senior management. If you require complete confidentiality, contact the **EthicsLine**.

From the *David M. Sherbin, Vice President, General Counsel, and Chief Compliance Officer* posting dated May 11, 2007:

To: All Global Employees:

Delphi allows access to the internet as a business tool to salaried employees around the world. However, through routine scans of information sent from Delphi computers across the internet, we find that employees are accessing, storing and transmitting inappropriate material to internal and external colleagues. Delphi Internet and electronic mail systems **must not** be used for any of the following activities:

- Harassment, employee political activity, personal profit or gain, illegal activities or activities that violate Delphi policies or otherwise reflect adversely on Delphi including:
  - Accessing, storing, sending, receiving, downloading, displaying, printing or otherwise disseminating inappropriate or disrespectful material (e.g., sexually explicit, pornographic, profane, obscene, fraudulent, hate site, bomb-building, racially, sexually or ethnically offensive, defamatory, or otherwise unlawful)
  - Participating in email chain letters
  - Utilizing for personal profit-making business activities
  - Gambling
  - Engaging in online personal/chat rooms not sponsored by Delphi
  - Inappropriate use that can potentially shut-down servers

- Disseminating or storing commercial advertisements, solicitations, promotions, destructive programs (that is, viruses or self-replicating code), political information, or any other unauthorized material.
- Activities which could disrupt or compromise the integrity or security or otherwise result in the misuse, of Delphi computing resources and communication networks.

Delphi cannot and will not tolerate the foregoing behavior. All employees are expected to know and abide by this policy.

Regarding “Ethics violations can have serious financial and legal repercussions.” (**See Exhibit HH**) Question: Is it ethical, much less legal, for DELPHI to take money that doesn’t belong to it, and give it to a third party minus any court order or judgment from any court of competent jurisdiction to do so? Is it also ethical, much less legal, for DELPHI to continue to take money, minus any cited or provided statute or order to do so, given that they’ve had all of the time in the world to provide such and respond with any cited authority, perceived or otherwise? Creditor, Scott Darryl Reese, does agree with, “Ignoring them is not good for our business — or yours.” Claimant *really* agrees with, “You have the right and responsibility to protect your personal stake in Delphi,” although the future of DELPHI, by its own admission, seems to be in question, at least within these 50 united States. Continuing with “Sometimes, even good people can make bad choices.” Really? Claimant Scott Darryl Reese is fully aware of the artifice, deceit, deception and mendacity of human nature, which is probably why DELPHI, Debtor, *DELPHI CORPORATION, et. al.; DELPHI - DEBTOR IN POSSESSION* went to such great lengths to insure that Claimant didn’t receive anything accounting for the theft of his private property to be used for his benefit and that of his family to sustain any semblance of a normal lifestyle, and went to equally great lengths in covering their tracks to ensure that they didn’t put anything in that they thought could hold them accountable. The *David M. Sherbin, Vice President, General Counsel, and Chief Compliance Officer* posting (**See Exhibit II**) has a name in conjunction with an official title associated with the document. It would have been an easy enough task for any officer of DELPHI, Debtor, *DELPHI CORPORATION, et. al.; DELPHI - DEBTOR IN POSSESSION* to sign the authority with which they purportedly were,

and are, acting under in the theft, and continued theft, of Claimant's private property. Claimant wonders why they didn't do this?

Actually, Claimant does not really wonder at all. From the *David M. Sherbin* posting, *supra*, "Delphi Internet and electronic mail systems **must not** be used for any of the following activities:

- Harassment, employee political activity, personal profit or gain, **illegal activities** or activities that violate Delphi policies or otherwise reflect adversely on Delphi including: ..."
  - Accessing, storing, sending, receiving, downloading, displaying, printing or otherwise disseminating inappropriate or disrespectful material (e.g., sexually explicit, pornographic, profane, obscene, fraudulent, hate site, bomb-building, racially, sexually or ethnically offensive, defamatory, or otherwise unlawful)

DELPHI, Debtor, *DELPHI CORPORATION, et. al.*; *DELPHI - DEBTOR IN POSSESSION*'s illegal activities have violated their own policies. All of these company cited "illegal activities" of a "fraudulent," "defamatory," or "otherwise unlawful" nature are activities that DELPHI seems to be engaged in as a matter of procedure. None of these **Material Facts Are In Dispute**.

### **TAKE JUDICIAL NOTICE**

All officers, agents, employees, marshals of the United States, attorneys for the government of the United States/United States Attorneys are placed on notice under authority of the supremacy and equal protection clauses of the United States Constitution and the common law authorities of *cases cited -- Haines vs. Kerner*, 404 U.S. 519-421, *Platsky vs. C.I.A.* 953 F.2d. 25, and *Anastasoff vs. United States*, 223 F.3d 898 (8<sup>th</sup> Cir. 2000) relying on *Willy vs. Coastal Corp.*, 503 U.S. 131, 135 (1992), “*United States vs. International Business Machines Corp.*, 517 U.S. 843, 856 (1996), quoting *Payne vs. Tennessee*, 501 U.S. 808, 842 (1991) (Souter, J., concurring). *Trinsey vs. Pagliaro*, D.C. Pa. 1964, 229 F. Supp. 647, *American Red Cross vs. Community Blood Center of the Ozarks*, 257 F.3d 859 (8<sup>th</sup> Cir. 07/25/2001). In re *Haines*: pro se litigants (Scott Darryl Reese is a pro se litigant) are held to less stringent pleading standards than bar [licensed] attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims. **In re *Platsky*: court errs if court dismisses the pro se litigant (Scott Darryl Reese is a pro se litigant) without instruction of how pleadings are deficient and how to repair pleadings.** In re *Anastasoff*: litigants’ Constitutional rights are violated when courts depart from precedent where parties are similarly situated. All litigants have a Constitutional right to have their claims adjudicated according the rule of precedent. See *Anastasoff vs. United States*, 223 F.3d 898 (8<sup>th</sup> Cir. 2000). Judgment(s) must be proven by evidence entered on the record through a competent witness. See *American Red Cross v. Community Blood Center of the Ozarks*, 257 F.3d 859 (8<sup>th</sup> Cir. 07/25/2001). **Telephone Cases.** (Part Two Three) (03/19/88) 126 U.S. 1, 31 L. Ed. 863, 8 S. Ct. 778. Statements of counsel in brief or in argument are not facts before the court and are therefore insufficient for the court’s summary conclusion. *Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F. Supp. 647.

### **Request for Relief**

Wherefore, Scott Darryl Reese, a/k/a SCOTT DARRYL REESE; SCOTT D. REESE, as one and the same, requests that this honorable court make determination that debtor, *DELPHI CORPORATION*, et. al., are a state of Michigan limited liability corporation, and as such, determine if debtor, *DELPHI CORPORATION*, et. al., has the statutory authority to act as a withholding agent.

Wherefore, Scott Darryl Reese, also requests relief from the automatic stay and for distribution of the secured claim from debtor, *DELPHI CORPORATION, et. al., DELPHI - DEBTOR IN POSSESSION*, DELPHI World Headquarters located at *5725 Delphi Drive, Troy, Michigan, 48098-2815*, and *DELPHI CHASSIS SYSTEMS* and Charla Keith, *General Motors/Delphi Automotive Payroll Services, Wage Attachments, 1225 West Washington Street, Tempe, Arizona, 85281* as a private person acting under the color and authority of their title enforcing the policy of Debtor, in the amount of \$40,844.62 as of 09-02-2007, and interest, costs, treble damages and counsel fee held in trust by Creditor's Counselors, and requests this relief under the *Equal Access to Justice Act* and the *Judiciary Act of 1789*, Section 35: "That in all courts of the United States, the parties may plead and manage their own causes personally or **by assistance of such counsel or attorneys at law** as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein."

The Judiciary Act of 1789, or An Act to establish the Judicial Courts of the United States, September 24, 1789, U. S. Statutes 1:73.

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I do hereby certify that, to the best of my knowledge and belief, the enclosed information is true and correct.

Date: \_\_\_\_\_, 2007

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Scott Darryl Reese;  
SCOTT DARRYL REESE;  
SCOTT D. REESE  
c/o 329 Basket Branch  
Oxford, Michigan state,  
[48371-6359]  
in the united States of North America  
Claimant - (248) 969-4055

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Subscribed to and sworn before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ .

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Notary Public, \_\_\_\_\_ County, Michigan.

My Commission Expires: \_\_\_\_\_